

REMARKS

I. Claim Rejections under 35 USC § 103

Claims 1-9, 11, 14-58, 60-63, 65, and 66 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 5,937,165 (Schwaller) in view of U.S. Patent No. 5,271,000 (Engbersen).

Claims 1, 14, 32-36, 40, and 54

Claim 1 recites tracing the execution of the workload to *identify a potential data conflict* (Emphasis Added). Claims 14, 32-36, 40, and 54 recite similar limitations. Applicants agree with the Examiner that Schwaller does not disclose the above limitations. According to the Office Action, column 7, lines 14-49 of Engbersen allegedly disclose the above limitations, and therefore, it would have been allegedly obvious to modify Schwaller in view of Engbersen because “it allows for the avoidance of data conflicts.” However, as discussed in the previous response, the cited passage of Engbersen actually discloses conflicts that are routing conflicts, not *data* conflicts. That Engbersen discloses routing conflict, not data conflict, is further evidenced by the statement in Engbersen that “The minipackets can be routed in a simultaneous fashion between all input-output combinations without causing any conflicts” (column 8, lines 34-36). Also, the cited passage of Engbersen discloses placing buffers at location where routing conflicts occur, and does not disclose or suggest identifying a potential data conflict by tracing the execution of the workload, as recited in the claims. Since both Schwaller and Engbersen fail to disclose or suggest the above limitations, they cannot be combined to form the subject matter of claims 1, 14, 32-36, 40, and 54.

According to page 13 of the Office Action, the routing conflict of Engbersen is allegedly a data conflict because data is what is routed through the network. Applicant disagrees. Just because there is a conflict in the routing (i.e., transmission path) of data, it does not necessitate a finding that there is also a conflict in the data itself. In fact, routing conflict may occur (e.g., when data from different sources are being routed through a same path at the same time) even though the data being transmitted has no data conflict. On the flip side, routing conflict may not occur if the transmission paths of the data are not in conflict, but there may still be data conflict

in the data being transmitted. Thus, a disclosure of routing conflict cannot necessitate a finding that data conflict is also disclosed.

Also in response to the Examiner's statement on page 13 of the Office Action that one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references, Applicant respectfully notes that the argument presented in the previous response (and above) actually addressed the *combination* of references, not individual reference. As discussed, since neither Schwaller nor Engbersen discloses or suggests potential data conflict, nor do they disclose or suggest identifying potential data conflict by tracing the execution of the workload, they cannot be combined to form the subject matter of the claims. Note that a prima facie case of a § 103 rejection cannot be established if the combination of the cited references does not result in the claimed subject matter.

For at least the foregoing reasons, Applicant submits that claims 1, 14, 32-36, 40, and 54, and their respective dependent claims, are allowable over Schwaller, Engbersen, and their combination, and requests that the § 103 rejection be withdrawn.

Claims 2, 37, 41, 55, 60, and 65

Claim 2 recites that the act of identifying potential data conflicts comprises predicting *how many* data conflicts will occur (Emphasis Added). Claims 37, 41, 55, 60, and 65 recite similar limitations. According to the Office Action, column 9, line 46 to column 10, line 39 of Schwaller allegedly discloses the above limitations. However, as discussed in the previous response, the cited passage of Schwaller discloses test scripts that include SEND and RECEIVE commands, but there is nothing in Schwaller that discloses or suggests *predicting how many* data conflicts will occur. For these additional reasons, Applicant submits that claims 2, 37, 41, 55, 60, and 65 are allowable, and requests that the § 103 rejection be withdrawn for these claims.

Applicant respectfully notes that the Office Action did not address the above presented argument from the previous response. Thus, should the Examiner be inclined to maintain the rejection for these claims, Applicant respectfully requests that the Examiner point out where Schwaller discloses *predicting how many* potential data conflicts *will occur* so that Applicant can understand and evaluate the basis of the rejection.

Claims 3, 38, 42, 56, 61, and 66

Claim 3 recites that the act of identifying potential data conflicts comprises *predicting types* of data conflicts (Emphasis Added). Claims 38, 42, 56, 61, and 66 recite similar limitations. According to the Office Action, column 9, line 46 to column 10, line 39 of Schwaller allegedly discloses the above limitations. As discussed in the previous response, the cited passage of Schwaller discloses test scripts that include SEND and RECEIVE commands, and does not disclose or suggest *predicting types* of data conflicts. Applicant further notes that Schwaller is silent with respect to categorizing data conflicts into *types*. Thus, Schwaller clearly does not disclose or suggest predicting a *type* of data conflict. For these additional reasons, Applicant submits that claims 3, 38, 42, 56, 61, and 66 are allowable, and requests that the § 103 rejection be withdrawn for these claims.

Applicant respectfully notes that the Office Action did not address the above presented argument from the previous response. Thus, should the Examiner be inclined to maintain the rejection for these claims, Applicant respectfully requests that the Examiner point out where Schwaller discloses *types* of data conflicts, and where Schwaller discloses *predicting types* of data conflicts so that Applicant can understand and evaluate the basis of the rejection.

CONCLUSION

If the Examiner has any questions or comments regarding this response, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **OID-2000-017-01**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **OID-2000-017-01**.

Respectfully submitted,

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